

IN THE
SUPREME COURT OF MISSOURI

DUPLICATE
OF FILING ON

MAY 24 2004

IN OFFICE OF
CLERK SUPREME COURT

STATE OF MISSOURI ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General,

Relator,

vs.

HONORABLE MATT BLUNT,
Secretary of State for the State of Missouri

Respondent.

No. **086013**

**PETITION FOR PEREMPTORY AND
PERMANENT WRITS OF MANDAMUS**

The General Assembly and the Governor having taken the steps necessary to place a proposed constitutional amendment on the ballot at the August election, the Secretary of State is required to perform certain duties to ensure that decision is implemented. Because he refuses to perform those duties, insisting on additional procedure steps beyond those provided by the Constitution, Relator seeks a peremptory writ of mandamus requiring him to proceed to protect the Governor's authority while this Court addresses the merits of this petition, and a permanent writ of mandamus barring Respondent from unnecessarily and unconstitutionally delaying a prompt vote on a proposed amendment that passed the General Assembly overwhelmingly.

Background

Realtor Jeremiah W. (Jay) Nixon is the duly elected Attorney General of the State of Missouri. Respondent The Honorable Matt Blunt is the duly elected Secretary of State for the State of Missouri.

On March 1, the Missouri Senate passed by a vote of 26 yeas and 6 nays Senate Joint Resolution 29, a proposed constitutional amendment to be put to a vote of the people of this state. A true and correct copy of SJR 29 as adopted in the Senate is attached hereto as Exhibit A (p.1). The Senate's actions and votes with respect to SJR 29 are reported at page 500 of the Senate Journal, attached hereto as Exhibit B (p.12).

On May 14, 2004, the Missouri House of Representatives took up and passed without amendment Senate Joint Resolution 29. The House's action, and votes of 130 yeas and 26 nays, are reflected on page 2016 of the House Journal, attached as Exhibit C, (pp.100-01).

The Secretary of the Senate has published SJR 29 as "Truly Agreed and Finally Passed." The Truly Agreed and Finally Passed SJR 29, certified and authenticated by the Secretary of the Senate, is attached as Exhibit D (pp.112-13).

On May 19, 2004, Governor Bob Holden issued a Proclamation pursuant to Article XII, Section 2(b) of the Missouri Constitution calling for special election on August 3, 2004, and setting forth the constitutional amendment proposed by SJR 29 to be voted upon by the people. A copy of this Proclamation is attached as Exhibit E (p.114).

On Wednesday, May 19, 2004, Respondent Secretary of State Matt Blunt wrote Governor Holden, stating that he cannot and will not begin to execute his legal duties to prepare the ballot for the special election, including but not limited to his duties in this regard set forth in Section 116.160 RSMo 2000, until he receives the original SJR 29, signed by the Speaker of the House and the President Pro-Tem of the Senate and delivered by them to his office. A copy of his letter is attached as Exhibit F (pp.115-16).¹

Because the condition precedent Secretary Blunt demands – which nowhere appears in the constitution or the statute – cannot now be complied with in time for the Secretary to certify and distribute the ballot in accordance with the deadline set for in Section 116.240 RSMo 2000, the Secretary's position is an unmistakable attempt to frustrate the Governor's constitutional prerogative to put this matter before the voters in an August special election.

On Thursday, May 20, 2004, Relator sought a writ of mandamus in the Circuit Court of Cole County, which was denied on May 21, 2004, and a copy of this order is attached as Exhibit H (p118-20).

¹ Auditor McCaskill, by letter to the Attorney General, dated May 21, 2004, stands ready to complete her duties with respect to the preparation of the ballot putting the proposed amendment in SJR 29 to a vote of the people in August "within one hour." A copy of this letter is attached hereto as Exhibit G.

On Friday, May 21, Relator sought to bypass the requirement of Rule 84.22(a) that it proceed first in the Court of Appeals, seeking a writ of mandamus directly in this Court as No. SC86011. That same day, the Court denied that request without prejudice.

Relator immediately sought a writ in the Missouri Court of Appeals, Western District. That court requested a response from Respondent Blunt, heard argument, and then denied the petition. A copy of that court's order is attached as Exhibit I.

Reasons to Why the Writ Should Issue

The powers of the General Assembly and the Governor in proposing constitutional amendments are set out the Missouri Constitution. Article XII, Section 2(a), provides the method by which the General Assembly proposes constitutional amendments:

Constitutional amendments may be proposed at any time by a majority of the member-elect of each house of the general assembly, the vote to be taken by yeas and nays and entered on the journal.

Article XII, Section 2(b), in turn, provides that an amendment to the constitution proposed by the General Assembly pursuant to Section 2(a) shall be put to the voters in the next general election "or at a special election called by the governor prior thereto[.]"

Once a proposed constitutional amendment has received a constitutional majority in both houses of the General Assembly and that fact is recorded in the journal, the Missouri Constitution vests the Governor with the authority to set a special election at

which that proposed amendment will be presented to the voters. Here, both houses of the General Assembly acted, those acts were recorded in the journals of both houses, and the Governor responded by setting a special election on the August primary date, as he was constitutionally authorized to do.

By refusing to act, Respondent Secretary Blunt is taking the position that he can and will frustrate the holding of an election on the date set by the Governor – unless legislative leaders take steps that neither the Constitution nor the statute relied upon by the Secretary require. He knows that the Speaker of the House and the Senate Pro-Tem have not and will not comply with the Secretary's demand in time for the Secretary to certify and distribute the ballot before the May 25, 2004, deadline established in Section 116.240 RSMo 2000. He is thus assuming for himself unilateral authority to counteract the Governor's constitutional prerogative to have the proposed amendment presented to the voters in an August special election.

Relator seeks peremptory and then permanent writs of mandamus to protect the constitutional authority of the Governor and large majorities of the House and Senate, and to ensure that Missouri voters can reject or adopt at the earliest possible date a measure whose importance is demonstrated not just by overwhelming legislative majorities, but by the continuing developments of events around the country that prompted the Missouri General Assembly's action.

Suggestions in support of this Petition are attached.

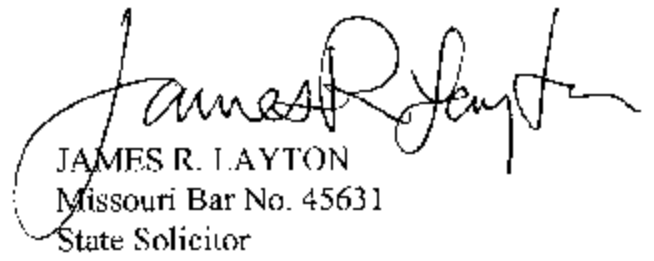
Relief Requested

For the reasons stated above, the Attorney General prays for Peremptory and Permanent Writs of Mandamus. He asks that the Respondent Secretary of State Blunt be ordered to immediately undertake – and to complete by the end of the business day on May 25, 2004 – his duties under Section 116.160 and other applicable statutes, to ensure that the ballot certified on that date contains the proposed constitutional amendment set forth in the Truly Agreed and Finally Passed SJR 29, thus making it possible for the August 3, special election to proceed as ordered by the Governor as authorized by Article XII § 2(b). Relator also asks that the Court, after hearing the case on the merits, grant a permanent writ ensuring that the special election will proceed – and thus, if the proposed amendment is adopted, that it will be come effective – without delay. In the alternative, Relator asks the Court to proceed immediately to resolution of the matter on the merits before mid-day May 25.

Respectfully submitted,

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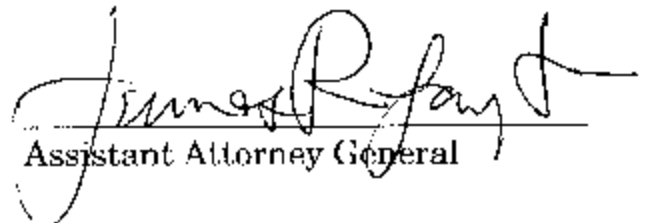
JAMES R. McADAMS
Missouri Bar No. 33582
Assistant Attorney General

Attorneys for Relator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by hand delivery or U.S. Mail, postage prepaid, on this 24th day of May, 2004, to:

Terry Jarrett
Office of the Secretary of State
State Information Center, 600 W. Main
Jefferson City, MO 65101
(573) 526-1272
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Assistant Attorney General